

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

GARY LEBOWITZ, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  v.  DOW JONES AND COMPANY, INC.  Defendant	Civil Action No. 06-CV-2198  Miriam G. Cedarbaum, USDJ
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**DECLARATION OF JOSEPH S. TUSA IN SUPPORT OF MOTION  
TO WITHDRAW AS INDIVIDUAL COUNSEL FOR PLAINTIFF  
AND IN RESPONSE TO MOTION TO STRIKE APPEARANCE**

I, Joseph S. Tusa, an attorney admitted and in good standing in this Court, declare as follows.

1. I am a shareholder in the law firm Tusa P.C., and was a shareholder in Whalen & Tusa, P.C. before that New York professional service corporation was dissolved by the New York Secretary of State on April 18, 2011.

2. I submit this Declaration in support of the motion filed by Joseph S. Tusa and Tusa P.C. to withdraw as individual counsel for Plaintiff Gary Lebowitz, pursuant to Local Rule 1.4.

3. This Declaration is further submitted in response to the June 2, 2011 motion filed in this Court. *Docket Nos. 103, 104.*

4. On May 24, 2011, with the prior consent of Plaintiff Gary Lebowitz, the undersigned and Tusa P.C. filed their appearances in this action.

5. On May 25, 2011, the undersigned and Tusa P.C. filed their appearances in the related and coordinated putative class action styled *Newmark v. Dow Jones and Company, Inc.*, S.D.N.Y. Case No. 06-cv-2992 (MGC) (the “Newmark Action”), following the prior consent of counsel of record in that action. The instant motion is not directed, and is not intended to, affect the appearance of the undersigned and Tusa P.C. in the Newmark Action or the representation of the Newmark Action plaintiffs by the undersigned.

6. Prior to its dissolution, Whalen & Tusa, P.C. was counsel of record in this action, but not in the Newmark Action. However, because the two actions were related and coordinated in this Court, in an effort to avoid duplication, counsel in both actions worked together on motion practice, discovery and settlement negotiations.

7. Prior to its dissolution, I was the primary attorney and shareholder at Whalen & Tusa P.C. charged with providing professional services to plaintiff Gary Lebowitz and the

putative class in this action. In connection with those efforts, I was involved in drafting pleadings, motions, motion responses, discovery requests and discovery responses. I have appeared and participated in numerous conferences and hearings in this action. I assisted in the drafting and participation in the Court-ordered settlement mediation of this action. I prepared Mr. Lebowitz and defended his deposition in this action. I assisted Mr. Lebowitz respond to defendants' discovery demands in this action. I drafted Mr. Lebowitz' legal response to defendant's challenge to his participation in this action as a class representative. I drafted correspondence to Mr. Lebowitz keeping him updated as to the status of this action, and the related Newmark Action. I further communicated with Mr. Lebowitz by telephone and email on numerous occasions.

8. Through June 14, 2011, the undersigned has provided 324.9 hours of professional service to the Plaintiff and putative class in this action, and the related Newmark Action, through my associations with Tusa P.C. and Whalen & Tusa, P.C.

9. On April 25, 2011, I informed Mr. Lebowitz by telephone that Whalen & Tusa, P.C. had been dissolved by the New York Secretary of State. During that telephone discussion, Mr. Lebowitz provided me with his consent and desire that I and Tusa P.C. remain his counsel in this action, along with the other counsel of record. That discussion is documented in a letter from the undersigned to Mr. Lebowitz.

10. Accompanying the June 2, 2011 motion submission (*Docket No. 104*), is an Affidavit signed by Mr. Lebowitz wherein he apparently changes his mind, and no longer desires the undersigned or Tusa P.C. to be his individual counsel in this action.

11. Accordingly, pursuant to Local Rule 1.4, the undersigned and Tusa P.C. move to withdraw as individual counsel for Mr. Lebowitz in this action.

12. The undersigned and Tusa P.C. preserve their appearance for the putative class and plaintiffs in the Newmark Action.

13. The undersigned and Tusa P.C. further preserve their rights based on the professional services performed by Joseph S. Tusa in this action, during his association with Tusa P.C. and Whalen & Tusa, P.C.

14. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 15<sup>th</sup> day of June, 2011 in Lake Success, New York.

/s/ Joseph S. Tusa  
Joseph S. Tusa (JT - 9390)